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FILED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

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SEAN M. JUDWIG

U.S. DISTRICT COURT
OF INDIANA

GARY DEVELOPMENT COMPANY,)
INC.)

Plaintiff,)

v.)

Case No. 2:96CV489 RL

UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY,)

Defendant.)

RECEIVED

VERIFIED COMPLAINT FOR JUDICIAL REVIEW

The Plaintiff, Gary Development Company, Inc. ("GDC"), by counsel, pursuant to 5 U.S.C. § 702, respectfully requests that this Court review the final agency action of the Defendant, the United States Environmental Protection Agency ("EPA"), and in support thereof states as follows:

1. Jurisdiction is proper pursuant to 28 U.S.C. § 1331.
2. Venue is proper pursuant to 28 U.S.C. § 1391(e).
3. Pursuant to 5 U.S.C. § 702, a person who is either adversely affected or aggrieved by EPA action is entitled to judicial review thereof.
4. Pursuant to 5 U.S.C. § 706, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.

5. GDC is a corporation, incorporated under the laws of the State of Indiana maintaining its principal place of business in Gary, Indiana.

6. The EPA is an independent agency in the Executive Branch established by Reorganization Plan 3 of 1970.

7. On or about May 30, 1986, the EPA, Region V, issued a Complaint and Compliance Order (the "Complaint and Compliance Order") against GDC in Docket No. RCRA V-W-86-R-45 captioned "In the Matter of Gary Development Company, Inc., 479 North Cline Avenue, P. O. Box 6056, Gary Indiana, 46406, Ind. 077-005-916."

8. The Complaint and Compliance Order alleged that GDC had violated certain provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., and the EPA's regulations implementing that statute, 40 C.F.R. Part 261, et seq.

9. In September 1987 and December 1990, an administrative hearing (the "Hearing") was held on the matters raised in the Complaint and Compliance Order.

10. On or about May 8, 1991, GDC timely submitted a post-Hearing brief.

11. On April 8, 1996, nearly ten (10) years after EPA filed its Complaint and Compliance Order and nearly five and one-half (5-1/2) years after the Hearing, the EPA's Presiding Officer issued her Decision and Order ("Initial Decision").

12. The Initial Decision adversely affected GDC.

13. By certified mail dated April 12, 1996, EPA's Regional Hearing Clerk

mailed a copy of the Initial Decision to the following address:

Warren Krebs, Esquire
1600 Market Tower Building
Ten West Market Street
Indianapolis, Indiana

14. Mr. Krebs is an Indianapolis attorney, who had represented GDC on behalf of GDC's designated Indianapolis law firm of Parr, Richey, Obremskey & Morton ("Parr-Richey"), which is located at the address identified in Paragraph 13.

15. Mr. Krebs was informed by GDC management that a copy of the Initial Decision was not sent directly to GDC by the Regional Hearing Clerk.

16. Mr. Krebs left Parr-Richey two years previously in March 1994, and was of counsel at another Indianapolis law firm at the time the Initial Decision was mailed.

17. In late April 1996, Mr. Krebs learned of the Initial Decision.

18. On or about June 3, 1996, GDC filed a Verified Petition for Order Directing Service of Initial Decision and Establishing Time to File Notice of Appeal (the "Verified Petition") with the EPA's Environmental Appeals Board ("EAB"), wherein Mr. Krebs petitioned that service be made correctly upon the party respondent GDC at Gary, Indiana.

19. On or about June 21, 1996, GDC filed a Notice of Appeal of Gary Development Company, Inc. Objecting to Decision and Order Dated April 8, 1996 (the "Notice of Appeal") with the EAB.

20. On or about June 21, 1996, the EAB issued an Order (the "June 21 Order") requesting GDC to provide certain information relating to Mr. Krebs' change of law firms and his representation of GDC.

21. On or about July 3, 1996, GDC filed a Verified Response to the June 21 Order.

22. On or about July 17, 1996, the EAB issued an Order to the EPA, Region V, and GDC (the "July 17 Order") stating that it was construing GDC's Notice of Appeal to "include a request for leave to file an appeal out of time" and directing EPA, Region V "to respond to the merits of Gary's proposed appeal."

23. On or about July 30, 1996, the EPA filed a Response to Request to File Appeal Out of Time with the EAB.

24. On or about August 16, 1996, the EAB issued an Order Dismissing Appeal (the "August 16 Order"), under the terms of which the EAB dismissed GDC's Notice of Appeal, asserting that it had been filed in an untimely manner. A true and accurate copy of the August 16 Order is attached as Exhibit A.

25. The requirements for service of all rulings, orders, and decisions in proceedings covered by EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Consolidated Rules") are set forth in 40 C.F.R. § 22.06.

26. The requirements for the filing of an Initial Decision of an EPA Presiding Officer are set forth in § 22.27 of the Consolidated Rules. 40 C.F.R. § 22.27.

27. Section 22.06 states as follows:

All rulings, orders, *decisions*, and other documents issued by the Regional Administrator, Regional Judicial Officer, or Presiding Officer, as appropriate, shall be filed with the Regional Hearing Clerk. . . . Copies of such rulings, orders, *decisions*, or other documents shall be *served* personally, or by certified mail, return receipt requested, upon all *parties* by the Environmental Appeals Board, the Regional Administrator, the Regional Judicial Officer, or the Presiding Officer, as appropriate. (Emphasis added.)

28. Section 22.27 states, in pertinent part, as follows:

(a) Filing and contents. The Presiding Officer shall issue and file with the Regional Hearing Clerk his Initial Decision *as soon as practicable* after the period for filing reply briefs under Section 22.26 has expired. . . . Upon receipt of an Initial Decision, the Regional Hearing Clerk shall forward a copy to all *parties*. (Emphasis added.)

29. "Party" is defined in § 22.03(a) as "any person that participates in a hearing as complainant, respondent, or intervenor." 40 C.F.R. § 22.03(a).

30. Service of pleadings and documents upon a domestic corporation must be by personal service or certified mail "directed to an officer, partner, a managing or general agent, or to any other person authorized by appointment or by federal or state law to receive service of process." 40 C.F.R. § 22.05(b)(11).

31. Consistent with the requirements of 40 C.F.R. § 22.27, the Initial Decision in this matter was filed with the Regional Hearing Clerk on April 10, 1996. However, contrary to the requirements of § 22.05, 22.06 and 22.27 of the Consolidated Rules, the

Initial Decision was not served upon GDC, the *party* in this matter, nor upon its appointed and known registered agent, C T Corporation System, upon whom EAB served the Complaint in May 1986. Furthermore, the Initial Decision was not issued *as soon as practical* after the filing of reply briefs as is contemplated for accurate service under 40 C.F.R. § 22.27.

32. Both prior to and subsequent to the issuance of the Initial Decision in this matter, all non-procedural documents and orders issued by EPA, the Presiding Officer, or the EAB, which were directed to GDC were sent to, or served upon, GDC directly. Such documents include the Complaint and Compliance Order, the June 21 Order, the July 17 Order, and the EAB's August 16 Order.

33. The Consolidated Rules draw a sharp distinction between *party* and *counsel*. 40 C.F.R. § 22.05(c)(3) states, in pertinent part, as follows:

[T]he original of any pleading, letter or other document (other than exhibits) shall be signed by the *party* filing *or by his counsel* or other representative. . . .

Moreover, 40 C.F.R. § 22.10 states that "any party may appear in person or by counsel or other representative." Thus, the Consolidated Rules require service of the Initial Decision GDC.

34. Because GDC was not served with the Initial Decision, the time for responding or appealing those decisions has not lapsed.

35. The initial document filed by GDC was its Request for Hearing and Answer dated June 30, 1986, which on page one set forth GDC's address as "479 North Cline Avenue, Gary, Indiana 46406." GDC has never changed this address.

36. In the August 16 Order, the EAB erroneously indicates that Warren Krebs was required to notify the Regional Hearing Clerk, the Presiding Officer, or the other parties to the case of his change of address when he left Parr-Richey.

37. 40 C.F.R. § 22.05(c)(4) states, in pertinent part, as follows:

The initial document filed by any *person* shall contain his name, address and telephone number. Any changes in this information shall be communicated promptly to the Regional Hearing Clerk, Presiding Officer, and all parties to the proceeding. A *party* who fails to furnish such information and any changes thereto shall be deemed to have waived his right to notice and service under these rules. (Emphasis added.)

38. "Person" is defined in § 22.03 of the Consolidated Rules as:

[A]ny individual, partnership, association, corporation, and any trustee, assignee, receiver, or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

39. Counsel is not a "person" as defined, nor is he a "party." Thus, the requirements of § 22.05(c)(4) do not apply to counsel, and GDC's counsel was under no obligation to provide notice of a change of address.

40. GDC's counsel was always identified as "Parr, Richey, Obremskey and Morton, Attorneys for Gary Development Company, Inc.," rather than Warren Krebs individually. The Regional Hearing Clerk made no service of the Initial Decision to Parry-Richey.

41. Attorney Warren Krebs was ill and undergoing medical treatment when he first obtained the Initial Decision. Physician's care and laboratory tests were performed in early May 1996. By May 14, 1996, surgery was determined to be necessary. On May 17, 1996, diagnostic and surgical procedures were performed. During the time frame asserted by the EAB to be applicable for the filing of an appeal, Warren Krebs was ill and undergoing intensive medical care.

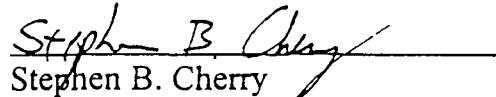
42. The medical condition of Warren Krebs should be given special consideration when reviewing the short time frames.

43. The EAB erroneously concluded that any review would further delay the implementation of an injunctive remedy designed to insure protection of public health and the environment based upon its adoption of Region V's undocumented and unverified assertion on July 30, 1996, that "a plume of contamination could be migrating undetected to groundwater or the Calumet River." (See Exhibit A at pp. 11 and 12 referencing Region V's Response to GDC's Request to File Appeal Out of Time at 1-2.)

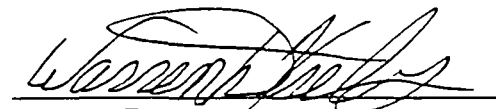
44. The only evidence in the administrative record is that the groundwater flow is *from* adjacent property *into* GDC's property not *from* GDC's property. Thus, contrary

to Region V's assertions, there is no public health or environmental agency. A fact borne out by the five (5) years spent by the Presiding Officer in rendering the Initial Decision.

WHEREFORE, Plaintiff, Gary Development Company, Inc., respectfully requests this Court to reverse the August 16, 1996, decision of the Environmental Appeals Board and remand this case for consideration consistent with the requirements of 40 C.F.R., Part 22 and Part 601, et seq., and 42 U.S.C. § 6901, et seq., and any other relief just and proper.


Stephen B. Cherry
Attorney No. 15338-49
Lisa C. McKinney
Attorney No. 16790-53

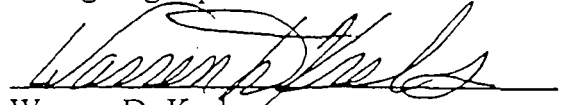
BOSE McKINNEY & EVANS
2700 First Indiana Plaza
135 North Pennsylvania Street
Indianapolis, 46204
(317) 684-5000


Warren D. Krebs
Attorney No. 5340-06
111 Monument Circle
Indianapolis, Indiana 4604

Attorneys for Plaintiff, Gary
Development Company

AFFIRMATION

I affirm under penalties of perjury that the foregoing representations are true to the best of my recollection.


Warren D. Krebs

PROOF AND CERTIFICATION OF SERVICE

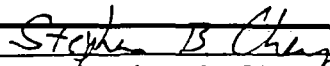
The undersigned hereby certifies that a copy of the foregoing Verified Complaint for Judicial Review has been served upon the following via United Parcel Service Next Day Air Delivery, this 16th day of September, 1996:

Marc Radell
Office of Regional Counsel
United States Environmental Protection
Agency, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604

Office of Administrator
United States Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460

Environmental Appeals Board
607 Fourteenth Street, N.W., Suite 500
Washington, D.C. 20005

Department of Justice
10th Street and Constitution Avenue, N.W.
Washington, D.C. 20530


Stephen B. Cherry

(Slip Opinion)

NOTICE: This opinion is subject to formal revision before publication in the Environmental Administrative Decisions (E.A.D.). Readers are requested to notify the Environmental Appeals Board, U.S. Environmental Protection Agency, Washington, D.C. 20460, of any typographical or other formal errors, in order that corrections may be made before publication.

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:

Gary Development Company

Docket No. RCRA-V-W-86-R-45

)
)
) RCRA (3008) Appeal
) No. 96-2
)
)

[Decided August 16, 1996]

ORDER DISMISSING APPEAL

*Before Environmental Appeals Judges Ronald L. McCallum,
Edward E. Reich, and Kathie A. Stein.*

EXHIBIT A

GARY DEVELOPMENT COMPANY

RCRA (3008) Appeal No. 96-2

ORDER DISMISSING APPEAL

Decided August 16, 1996

Syllabus

Following an evidentiary hearing, an EPA Administrative Law Judge (ALJ) concluded that Gary Development Company (Gary) had unlawfully accepted hazardous waste for disposal at a landfill in Indiana. In an initial decision dated April 8, 1996, the ALJ ordered Gary to comply with RCRA closure, post-closure care, and groundwater monitoring requirements governing hazardous waste disposal facilities, and to pay an \$86,000 civil penalty. According to a certificate of service signed by the Regional Hearing Clerk for U.S. EPA Region V, the initial decision was sent to Gary's attorney by certified mail on April 12, 1996.

Based on the service date shown on the certificate of service, EPA's Consolidated Rules of Practice (40 C.F.R. Part 22) required any appeal from the ALJ's initial decision to be filed with the Environmental Appeals Board (Board) not later than May 7, 1996. No appeal was filed on or before that deadline, and the initial decision became the final order of the Board by operation of law on May 28, 1996.

On June 4, 1996, the Board received from Gary a petition claiming that the initial decision had never been correctly served, and requesting that the decision be re-served and that Gary be authorized to file an appeal within twenty days of the new date of service. Gary later explained, in a separate pleading filed at the Board's request, that its attorney had not actually received a copy of the initial decision until the last week of April, 1996, because the attorney had changed his business address (without informing the Regional Hearing Clerk); moreover, a substantial period of time had elapsed between the submission of post-hearing briefs to the ALJ and the service of the initial decision. On June 21, 1996, the Board received from Gary a proposed notice of appeal and appellate brief seeking to challenge various findings and conclusions set forth in the initial decision. The complainant, EPA Region V, subsequently urged the Board to dismiss Gary's proposed appeal as untimely without reaching the merits of Gary's objections to the initial decision.

GARY DEVELOPMENT COMPANY

Held: The Board rejects Gary's claim that the initial decision was improperly served. Further, the Board concludes that Gary has identified no "special circumstances" warranting relaxation of the deadline for filing an appeal in this case. Gary's petition for re-service of the initial decision is therefore denied, and Gary's appeal is dismissed.

Before Environmental Appeals Judges Ronald L. McCallum, Edward E. Reich, and Kathie A. Stein.

Opinion of the Board by Judge Stein:

Respondent Gary Development Company (Gary) seeks to appeal an initial decision issued by Administrative Law Judge J.F. Greene (ALJ) in this RCRA enforcement action. The deadline for filing an appeal from the initial decision expired on May 7, 1996, and, by operation of law, the initial decision became the final order of the Environmental Appeals Board (the Board) on May 28, 1996. The Board, however, did not receive any communication of any kind from Gary until June 4, 1996, and did not receive its notice of appeal until June 21, 1996. Finding no special circumstances that might justify reopening the Agency's final disposition of this matter, we dismiss the appeal as untimely.

I. BACKGROUND

On April 8, 1996, the ALJ issued her initial decision, concluding that Gary unlawfully accepted hazardous waste for disposal at a landfill that had neither achieved interim status under the Resource Conservation and Recovery Act (RCRA) nor obtained a RCRA permit. In the initial decision, the ALJ ordered Gary to undertake closure and post-closure care of the landfill in a manner consistent with the RCRA regulatory requirements governing hazardous waste disposal facilities - by, among other things, submitting a closure plan for approval by the State of Indiana's Department of Environmental Management and submitting a plan for a groundwater quality assessment program capable of determining whether any plume of contamination has entered the groundwater from the landfill. See Initial Decision at 59 and Compliance Order

attached thereto. In addition, the initial decision assesses an \$86,000 civil penalty for Gary's unlawful disposal of hazardous waste.

Pursuant to the requirement in EPA's Consolidated Rules of Practice, 40 C.F.R. § 22.06, the Regional Hearing Clerk sent a copy of the initial decision to Gary's counsel of record by certified mail, return receipt requested, on April 12, 1996. Therefore, as provided in 40 C.F.R. § 22.30(a), any appeal from the initial decision was required to be filed with the Board not later than May 7, 1996.¹ Because no appeal was filed by May 7, 1996, and because the Board did not elect to review the initial decision *sua sponte*, the initial decision became the Board's final order as of May 28, 1996. See 40 C.F.R. § 22.27(c) (absent an appeal (within twenty days) or an election by the Board to undertake *sua sponte* review (within forty-five days of service of the initial decision), "[t]he initial decision of the Presiding Officer shall become the final order of the Environmental Appeals Board * * * without further proceedings").

On June 4, 1996, the Board received from Gary a document styled "Verified Petition for Order Directing Service of Initial Decision and Establishing Time to File Notice of Appeal with Environmental Appeals Board" (Petition). In the Petition, Gary asserted that the ALJ's initial decision had not been properly served,² because it had been sent to Gary's attorney (Warren D. Krebs) at the address of a law firm with which Mr. Krebs was previously but no longer affiliated. Gary therefore requested that the Board order the

¹Section 22.30(a) required Gary's notice of appeal and appellate brief to be filed with the Board "within twenty (20) days after the initial decision is served upon the parties." Service of the initial decision was complete upon mailing, but five days were added to the time for filing an appeal because the initial decision was served by mail. See 40 C.F.R. § 22.07(c). Thus, the time for filing an appeal from the initial decision expired twenty-five days after April 12, 1996.

²See Petition at 1 ("Respondent * * * petitions for correct service of the Initial Decision and Order of the Administrative Law Judge"); *id.* at 2, paragraph 5 ("service was not made properly upon Respondent GDC [Gary] nor upon its counsel of record").

GARY DEVELOPMENT COMPANY

Regional Hearing Clerk to serve the initial decision again, directly on Respondent Gary Development Company, and further requested that the Board "confirm" that any notice of appeal might be submitted to the Board within twenty days after the new date of service. Petition at 2. While that request was pending, Gary submitted a proposed notice of appeal and appellate brief, which were received by the Board on June 21, 1996.

Also on June 21, 1996, the Board issued an order directing Gary to explain with greater specificity the basis for its contention that the initial decision had not been properly served. The June 21, 1996 order requested Gary to identify, among other matters, the date of counsel's actual receipt of the initial decision - a matter left unaddressed in Gary's original submission to the Board. In addition, the Board's June 21, 1996 order requested Gary to indicate whether counsel's change of address was ever communicated to Region V,¹ directing Gary's attention to the requirement in 40 C.F.R. § 22.05(c)(4) that any party to an administrative enforcement proceeding must promptly inform all parties to the proceeding, the Presiding Officer, and the Regional Hearing Clerk of any change of address that occurs during the pendency of that proceeding. The Board received Gary's response on July 3, 1996.

Following the Board's receipt of Gary's response, the Board issued an order on July 17, 1996, requesting Region V to respond to Gary's Petition and to identify any environmental consequences or prejudice that might arise if there were a further delay in the resolution of the matter. In its submission, dated July 30, 1996, and received on August 1, 1996, Region V opposed Gary's effort to institute this appeal out of time.

¹The Board's June 21, 1996 order also requested Gary to answer questions relative to the arrangements for Gary's representation in this matter that were made at the time of Mr. Krebs' departure from the Parr, Richey, Obremskey & Morton (Parr, Richey) law firm.

II. DISCUSSION

The Board consistently has required strict compliance with the time limits prescribed by regulation for perfecting an appeal, and only rarely has it accepted appeals that are not timely filed. By insisting on strict compliance the Board has sought, among other things, to promote certainty and uniformity in the application of regulatory deadlines; to limit reliance on the infinitely variable "internal operations" of litigants and law firms as determinants of when obligations must be met; to preserve the Agency's adjudicative resources for litigants who timely exercise their appeal rights; and to ensure that the Agency's procedural rules are applied equally to all affected parties.

Thus, for example, in *In re Outboard Marine Corp.*, 6 E.A.D. CERCLA Penalty Appeal No. 95-1 (EAB, Oct. 11, 1995), the Board rejected as untimely an appeal sought to be filed by EPA Region V on the twenty-first day after service of an ALJ's initial decision -- one day after the filing deadline established in 40 C.F.R. § 22.30. In rejecting an argument that service by "interoffice mail" should be deemed complete only as of the date of counsel's actual receipt, the Board stated that that approach would undermine "the primary aim of the 'computation of time' rules governing appeals to the Board, which is to provide the parties and the Board with certainty in determining when obligations must be fulfilled." *Outboard Marine*, slip op. at 4. The Board has similarly dismissed, in the context of administrative enforcement proceedings, appeals that were received eleven days,⁴ sixteen days,⁵ and twenty-one days⁶ after the expiration of the section 22.30 appeal period. The Board has been guided in such cases by the principle that "[t]he time requirements for appeals

⁴*In re Apex Microtechnology, Inc.*, EPCRA Appeal No. 93-2 (EAB, July 8, 1994).

⁵*In re B&B Wrecking & Excavating, Inc.*, 4 E.A.D. 16 (EAB 1992).

⁶*In re Production Plated Plastics, Inc.*, 5 E.A.D. 101 (EAB 1994).

must be followed unless *special circumstances* warrant [their] relaxation." *B&B Wrecking*, 4 E.A.D. at 17 (emphasis added); see also *Apex Microtechnology*, EPCRA Appeal No. 93-2, at 4.⁷

In its submissions to the Board, Gary cites essentially two principal factors to support relaxation of the applicable filing deadline in this case. Firstly, Gary notes that the ALJ's initial decision did not reach its attorney, Mr. Krebs, within the time period usually associated with the delivery of certified mail because the initial decision was sent to Mr. Krebs at a place at which he had not maintained an address for over two years prior to service of the initial decision. Related to this, Gary asserts that its counsel, Mr. Krebs, was not individually served, and that no one at Mr. Krebs' former law firm was authorized to accept service on his behalf. Secondly, Gary notes that the most recent "activity" in these proceedings, before the issuance of the initial decision, occurred when post-hearing briefs were submitted in May, 1991, and that in March, 1994, when Mr. Krebs withdrew from his former law firm and moved to a new address, Mr. Krebs considered the matter "inactive." We will examine each of these factors in turn.

The Consolidated Rules of Practice directly address the first of the factors cited by Gary, and they preclude reliance on an unreported change of address as grounds for filing an untimely appeal. Specifically, 40 C.F.R. § 22.05(c)(4) provides:

The initial document filed by any person shall contain his name, address and telephone number.

⁷While the Board has also occasionally used the term "extraordinary circumstances" (see, e.g., *Outboard Marine*, slip op. at 3), it did not by the use of this term mean to suggest a different standard. In fact, *Outboard Marine* relied on *Apex Microtechnology* for the applicable rule, thus confirming that nothing in *Outboard Marine* should be understood as a departure from the "special circumstances" standard articulated in *Apex*, *B&B Wrecking*, *Production Plated Plastics*, and the Order Dismissing Notice of Appeal in *In re Cypress Aviation, Inc.*, RCRA (3008) Appeal No. 91-6 (CJO, Jan. 9, 1992). Henceforth, the Board intends to articulate the standard consistently as "special circumstances."

Any changes in this information shall be communicated promptly to the Regional Hearing Clerk, Presiding Officer, and all parties to the proceeding. A party who fails to furnish such information and any changes thereto shall be deemed to have waived his right to notice and service under these rules.

The first responsive document Gary filed in this matter, a Request for Hearing and Answer and Responsive Pleading to Complaint and Compliance Order, was signed by Warren D. Krebs of Parr, Richey, Obremskey & Morton, "Attorneys for Gary Development Company, Inc.," with a listed address of 121 Monument Circle, Suite 500, Indianapolis, Indiana. The last document that Gary filed in this matter prior to the service of the initial decision was a May 29, 1991 Post-Hearing Reply Brief signed by Warren D. Krebs of Parr, Richey, Obremskey & Morton, "Attorneys for Gary Development Company, Inc.," with a listed address of 1600 Market Tower Building, Ten West Market Street, Indianapolis, Indiana. The certificate of service that accompanied the initial decision indicates that the initial decision was sent to Mr. Krebs at the last address of record that was on file with the Regional Hearing Clerk, specifically at 1600 Market Tower Building, Ten West Market Street, Indianapolis, Indiana.¹

Gary admits that no information regarding Mr. Krebs' change of address or withdrawal from his law firm, both of which Gary states occurred during March, 1994, was ever reported, "promptly" or otherwise, to the Presiding Officer or to anyone in the Regional office. Accordingly, the initial decision was properly sent to Warren Krebs at the address listed in Gary's most recent pleading.

¹Although service of the initial decision is complete upon mailing, not receipt, 40 C.F.R. § 22.07(c), we note that the return receipt accompanying service of the initial decision indicates receipt on April 15, 1996, and Gary acknowledges that the Parr, Richey law firm accepted service in mid-April, 1996. Verified Response to Order Issued June 21, 1996, at ¶ 7.

Therefore, as specifically provided in 40 C.F.R. § 22.05(c)(4), Gary is "deemed to have waived [its] right to notice and service," and cannot rely on any alleged insufficiency of service to justify the untimely filing of its appeal.⁹ See also *In re Chemical Management, Inc.*, 2 E.A.D. 772 (CJO 1989) (where attorney's withdrawal from pending case was not communicated to EPA, EPA's service of initial decision by delivery to attorney was valid and effective; untimely appeal from the initial decision was not justified on grounds of "improper" service).

Even if we were to disregard 40 C.F.R. § 22.05(c)(4), we would nonetheless be unwilling to recognize counsel's delayed receipt of the initial decision as a "special circumstance" favoring acceptance of this appeal. Gary's counsel acknowledges having received actual notice of the ALJ's initial decision during the "last week of April,"¹⁰ that is, at least one full week before the expiration of the applicable appeal period on May 7, 1996. During that period, Gary's counsel had sufficient time to submit a protective notice of appeal and to

⁹Gary was aware of the rules governing this proceeding. The Complaint itself informed Gary that "[t]he Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties * * *, 40 CFR Part 22, are applicable to this administrative action," Complaint and Compliance Order at 20 (May 30, 1986), and further indicated that "[a] copy of these [Part 22] Rules is enclosed with this Complaint." *Id.* The Part 22 rules established the prehearing and hearing procedures employed by the ALJ, and the Part 22 rules likewise established the requirements for reporting changes of address and for filing an appeal within twenty days of service of the initial decision - requirements that have not been altered or amended in any respect material to our ruling on this appeal since the issuance of the Complaint in this matter. Gary, in any event, has not disputed the applicability of the Part 22 rules, including section 22.05(c)(4), to its proposed appeal.

¹⁰Actually, counsel states that he "received [the] Decision and Order during the last week of April, 1994," Verified Response to Order Issued June 21, 1996, at ¶ 8, but the intended reference is obviously to the last week of April, 1996. Counsel goes on to state that his client did not authorize the filing of an appeal until May 10, 1996. *Id.* Although the timing of Gary's decision to authorize the filing of this appeal is of no direct relevance to our present inquiry, we note that May 10, 1996, was twenty-five days before the date of Gary's first communication with this Board.

request, from opposing counsel and the Board, an extension of time within which to prepare and file an appellate brief. Gary did not do so and, for reasons that are still unexplained, simply failed to communicate with the Board in any fashion until June 4, 1996.¹¹

Similarly, even if we were to calculate Gary's appeal deadline with reference to the date of counsel's actual receipt of the initial decision, we would still have to reject an appeal filed on June 21, 1996, as untimely. Counsel received the initial decision, by his own account, not later than April 30, 1996. Reckoning from that date, a twenty-day filing period would have expired May 20, 1996, and a twenty-five-day filing period would have expired May 28, 1996. Counsel's delayed receipt of the initial decision simply cannot explain the untimeliness of Gary's June 21, 1996 appeal, even if every chronological uncertainty were to be resolved in Gary's favor. In short, counsel's change of address and withdrawal from his law firm are decidedly not the kind of "special circumstances" that might justify our acceptance of Gary's untimely appeal.

A second factor cited by Gary to support relaxation of the Board's filing deadline is apparently the length of time during which this matter, having been heard by the ALJ and fully briefed by the parties, remained pending and unresolved. Gary specifically asserts that by March, 1994, when its attorney withdrew from his former law firm, three years had already passed since the matter was heard, and he therefore viewed the matter as "inactive." See Verified

¹¹Although Gary has offered a number of reasons for failing to notify the Region of its attorney's change of address in March, 1994, Gary has suggested no reason for failing to request an extension of the appeal deadline after receiving the ALJ's initial decision in April, 1996.

Moreover, notwithstanding Gary's failure to file an appeal within the required time, the Board could have elected to undertake *sua sponte* review of this matter within forty-five days after service of the initial decision. Having missed the deadline for filing an appeal, Gary should have made every effort to communicate its objections to the Board before May 28, 1996, while *sua sponte* review was still available and before the initial decision became the Board's final order.

Response to Order Issued June 21, 1996, at ¶ 6. Gary further points out that by the time an initial decision was issued, nearly five years had passed since Gary filed its last pleading with the ALJ during May, 1991. Although this matter was pending before the ALJ for a long time after the conclusion of the evidentiary hearing and the filing of post-hearing briefs, that delay does not justify Gary's failure to commence an appeal in a timely fashion.¹²

Based on our review of the record, we find that EPA Region V did nothing to mislead Gary as to the status of the case and did not suggest to Gary that it had decided to dismiss or abandon the matter. This case thus stands in sharp contrast to those cases where a petitioner claims to have relied on erroneous information given by EPA. See, e.g., *In re BASF Corp.*, 2 E.A.D. 925, 926 (Adm'r 1989) ("Where * * * a Region gives erroneous filing information in writing and a petitioner relies on and complies with it, the petition for review will not normally be rejected as untimely.").

Similarly, the ALJ did not mislead Gary as to the status of the matter.¹³ As far as we can tell from the written record, following submission of post-hearing briefs Gary never inquired as to the

¹²Our conclusion that the appeal must be dismissed as untimely in no way reflects our approval of the period of time it has taken the Agency to resolve this matter, from Region V's issuance of the Complaint in May, 1986, to the ALJ's issuance of the initial decision in April, 1996.

¹³We note, however, that the initial decision included no explicit reference to the availability, pursuant to 40 C.F.R. § 22.30, of further administrative review as of right. Although such references often appear in the Agency's initial decisions in enforcement matters, and are advisable, they are not required. Gary has not contended that the absence of an explicit reference to appeal rights in the initial decision contributed in any way to the untimeliness of its own appeal. In any event, Gary had been provided with a copy of the rules of practice that set forth the time limits for appeal, see *supra* note 9, and as a matter of law Gary is charged with knowledge of published federal regulations such as EPA's Part 22 rules of practice. See, e.g., *United States v. McGaughey*, 977 F.2d 1067, 1074 (7th Cir. 1992), cert. denied, 507 U.S. 1019 (1993); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 384-85 (1947).

status,¹⁴ a fact which detracts from its own alleged claim of unfairness. Under those circumstances, and knowing that a hearing had been held and no decision had yet been issued, we see no reasonable basis for Gary's counsel to assume that the case had somehow become "inactive."

Ultimately, we are not persuaded that there is any relevant distinction between Gary's situation and that of any other litigant who, through no fault of the Agency, simply overlooks or does not meet the deadline for filing an appeal. If such conduct were to be regarded as a "special circumstance" warranting suspension of an otherwise valid order entered in a contested matter, the finality of the Agency's decisions would be severely compromised. We therefore decline to depart in this case from the Board's established precedents requiring strict adherence to the time limits for appeal. As we stated in rejecting an untimely appeal from a RCRA permit decision issued by Region V, "the Agency's limited resources are best reserved for addressing the concerns of petitioners who are diligent enough to adhere to the filing requirements." *In re Heritage Environmental Services*, RCRA Appeal No. 93-8, at 5 (EAB, Aug. 3, 1994) (quoting *In re Georgetown Steel Corp.*, 3 E.A.D. 607, 609 (Adm'r 1991)).

We are particularly unwilling to depart from our precedents in a case, such as this, in which appeal proceedings would not only suspend the collection of a monetary penalty but also further delay the implementation of an injunctive remedy designed to ensure protection of public health and the environment. In its July 30, 1996 brief, the Region asserts that the injunctive relief, including installation of an appropriate groundwater monitoring system, is still needed, and that a plume of contamination could be migrating

¹⁴As far as we can tell from the written record, it is equally true that counsel for EPA Region V never formally inquired about status or requested an expedited or other resolution of this matter at any time after the parties submitted their final briefs to the ALJ in May, 1991.

undetected into groundwater or the Calumet River. See Region V Response to Gary's Request to File Appeal Out of Time at 1-2.

Moreover, having examined the initial decision and the arguments set forth in Gary's proposed appellate brief, we think it unlikely that acceptance of the appeal for decision on the merits would affect our ultimate disposition of this matter. A lengthy evidentiary hearing was conducted by the ALJ in this matter, first in 1987 and subsequently in 1990. The ALJ's decision appears to be well-reasoned; we have detected no obvious errors of law; and the factual findings appear to be supported by the record.

III. CONCLUSION

For these reasons, we deny the relief Gary seeks in its Petition, and dismiss RCRA (3008) Appeal No. 96-2 as untimely.

So ordered.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Appeal in the matter of Gary Development Company, RCRA (3008) Appeal No. 96-2, were sent to the following persons in the manner indicated:

Certified Mail,
Return Receipt Requested:

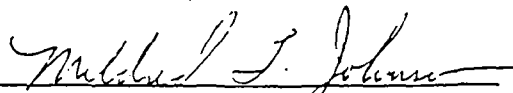
Warren D. Krebs, Esq.
Owen, Shoup, Trolson & Kinzie
3680 Bank One Tower
111 Monument Circle
Indianapolis, IN 46204-5136

Gary Development Company
ATTN: Larry Hagen, Jr.
P.O. Box 6056
Gary, IN 46406

First Class Mail,
Postage Pre-paid:

Marc Radell, Esq.
Office of Regional Counsel
U.S. EPA, Region V
77 W. Jackson Boulevard
Chicago, IL 60604

Dated: AUG 19 1996


Mildred T. Johnson
Secretary

United States District Court

NORTHERN

DISTRICT OF

INDIANA

GARY DEVELOPMENT COMPANY, INC.,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendant.

SUMMONS IN A CIVIL ACTION

CASE NUMBER: 2:96CV489 RL

TO: (Name and Address of Defendant) United States Environmental Protection Agency
Office of Administrator
401 M Street, S.W.
Washington, D.C. 20460

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (Name and address)

Warren D. Krebs, Esq.
111 Monument Circle
Indianapolis, Indiana 46204

Stephen B. Cherry, Esq.
Lisa C. McKinney, Esq.
Bose McKinney & Evans
135 North Pennsylvania Street, Suite 2700
Indianapolis, Indiana 46204

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK

DATE

Stephen R. Ludwig

9/16/96

Cornie Sue Roman

BY DEPUTY CLERK

RETURN OF SERVICE

Service of the Summons and Complaint was made by me ¹	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: _____
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted: _____
- ☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
--------	----------	-------

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date Signature of Server

Address of Server

CIVIL COVER SHEET

he JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket list. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS

GARY DEVELOPMENT COMPANY, INC.

DEFENDANTS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

2:96CV489 RL

b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Lake
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT INDIANA
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Warren D. Krebs, Esq.
111 Monument Circle
Indianapolis, Indiana 46204

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Stephen B. Cherry, Esq.
Lisa C. McKinney, Esq.
Bose McKinney & Evans
135 North Pennsylvania St., Suite 2700
Indianapolis, Indiana 46204 (317) 684-5000

I. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

V. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS OVERSIGHT

Review of Administrative Agency's Final Decision.

VI. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 535 General <input type="checkbox"/> 540 Death Penalty <input type="checkbox"/> 550 Other	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Emol. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1385H) <input type="checkbox"/> 862 Black Lung (922) <input type="checkbox"/> 863 OWB/DWW (405(g)) <input type="checkbox"/> 864 SSIO Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/KCC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved).

(c) Attorneys. Enter firm name, address, telephone number, and attorney or record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8 (a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction is based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an X in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

~~Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.~~

VIII. Related Cases. This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.